

HOUSE BILL No. 1559

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-2-9; IC 33-39.

Synopsis: Special prosecutor's office. Establishes the office of the special prosecutor for civilian and police affairs to investigate cases in which a police officer is alleged to have killed or seriously injured an unarmed person. Requires the office to randomly select a special prosecutor to prosecute a case involving a police shooting of an unarmed person from a statewide special prosecuting attorney pool. Establishes the police conduct review commission to investigate police violence against unarmed persons and, if warranted, to recommend appointment of a special prosecutor.

Effective: July 1, 2015.

Porter

January 20, 2015, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1559

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-2-9 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2015]:
- 4 **Chapter 9. Office of the Special Prosecutor for Civilian and**
- 5 **Police Affairs**
- 6 **Sec. 1. The following definitions apply throughout this chapter:**
- 7 (1) "Chief" means the chief special prosecutor for civilian and
- 8 police affairs.
- 9 (2) "Commission" means the police conduct review
- 10 commission established under section 7 of this chapter.
- 11 (3) "Firearm" has the meaning set forth in IC 35-47-1-5.
- 12 However, the term does not include a taser (as defined in
- 13 IC 35-47-8-3).
- 14 (4) "Law enforcement officer" means:
- 15 (A) a police officer (including a correctional police officer),



sheriff, constable, school resource officer, school corporation police officer, or marshal;

(B) a deputy of any of those persons;

(C) a conservation officer;

(D) an enforcement officer of the alcohol and tobacco commission;

(E) an enforcement officer of the securities division of the office of the secretary of state;

(F) a gaming agent employed under IC 4-33-4.5 or a gaming control officer employed by the gaming control division under IC 4-33-20; or

(G) an alcoholic beverage enforcement officer, as set forth in IC 35-42-2-1(a)(1).

(5) "Pool" means the special prosecuting attorney pool established by section 3 of this chapter.

(6) "Qualified prosecuting attorney" means an attorney licensed to practice law in Indiana who is a senior prosecuting attorney or who is currently employed as a prosecuting attorney or deputy prosecuting attorney.

(7) "Serious bodily injury" has the meaning set forth in IC 35-31.5-2-292.

(8) "Unarmed person" means a person who does not possess a deadly weapon.

Sec. 2. (a) There is established the office of the special prosecutor for civilian and police affairs. The office of the special prosecutor for civilian and police affairs consists of the chief special prosecutor for civilian and police affairs, who is the director of the office, and an additional staff of employees appointed by the chief as necessary to carry out the duties of the office. The office shall provide rooms and staff assistance for the police conduct review commission established by section 7 of this chapter.

(b) The office of the special prosecutor for civilian and police affairs shall investigate every incident in which a law enforcement officer kills or causes serious bodily injury to another person.

(c) The Indiana state police department shall assign a forensic and investigative team to assist the office of the special prosecutor for civilian and police affairs in the investigation of an incident in which a law enforcement officer kills or causes serious bodily injury to another person. However, if it appears that the law enforcement officer who killed or caused serious bodily injury to the other person is a member of the Indiana state police



department, the governor shall appoint another law enforcement agency to assist the office of the special prosecutor for civilian and police affairs. The state shall reimburse the other enforcement agency for its expenses in assisting the office of the special prosecutor for civilian and police affairs.

(d) The office of the special prosecutor for civilian and police affairs has exclusive jurisdiction in the prosecution of a law enforcement officer who kills or causes serious bodily injury to an unarmed person. Jurisdiction vests with the office of the special prosecutor for civilian and police affairs when the chief determines, based on an investigation, that:

(1) a law enforcement officer killed or caused serious bodily injury to another person; and

(2) the person was unarmed.

Only a prosecuting attorney appointed by the office of the special prosecutor for civilian and police affairs may prosecute a case described in this subsection. A determination under this subsection divests the prosecuting attorney of the judicial district in which the incident occurred of jurisdiction over the case. A special prosecuting attorney appointed under this section has the same powers as the prosecuting attorney of the county. However, the chief shall limit the scope of the special prosecutor's duties to include only the investigation or prosecution of a particular case or particular grand jury investigation.

(e) Not later than ten (10) days after jurisdiction vests with the office of the special prosecutor for civilian and police affairs, the chief shall randomly select a prosecuting attorney from the pool of prosecuting attorneys described in section 3 of this chapter. The prosecuting attorney selected from the pool shall have complete charge of the case.

(f) If the randomly selected prosecuting attorney:

(1) serves the judicial district where the incident occurred;

(2) has or has had a professional relationship with a law enforcement officer involved in the incident; or

(3) has a conflict of interest;

the chief shall randomly select another prosecuting attorney. If necessary, the chief may continue to randomly select a prosecuting attorney until the chief selects one who is not disqualified under subdivisions (1) through (3).

Sec. 3. (a) The special prosecuting attorney pool is established.

(b) The governor shall appoint at least ten (10) qualified prosecuting attorneys to the pool. In selecting qualified prosecuting



attorneys for the pool, the governor shall ensure:

(1) that each qualified prosecuting attorney appointed to the pool has the high level of experience and expertise required to prosecute a case involving the death or serious bodily injury of a person; and

(2) that qualified prosecuting attorneys are appointed from geographically diverse counties to minimize the opportunity for disqualifications to arise under section 2(f) of this chapter.

(c) Except as provided in subsection (d) or (e), a qualified prosecuting attorney appointed to the pool serves a four (4) year term.

(d) The term of a qualified prosecuting attorney ends if the person ceases to be a qualified prosecuting attorney.

(e) The governor may remove a qualified prosecuting attorney from the pool only for misconduct, including imposition of a disciplinary sanction by the supreme court.

Sec. 4. (a) The governor shall appoint the chief. The chief:

(1) except as provided in subdivision (2), shall be appointed for a term that expires on the earlier of the date that:

(A) the term of the governor who appointed the chief expires; or

(B) the governor leaves office;

(2) may be removed from office by the governor only for:

(A) neglect of duty;

(B) misfeasance;

(C) malfeasance; or

(D) nonfeasance;

(3) must be an attorney licensed to practice law in Indiana; and

(4) is entitled to receive compensation set by the governor and approved by the budget agency.

If the governor is reelected, the governor may reappoint the chief for an additional term. The chief's compensation may not be reduced during the chief's continuance in office.

(b) Subject to the approval of the budget agency, the chief shall fix the salary of all other employees of the office of the special prosecutor for civilian and police affairs.

(c) Except for information declared confidential under this chapter, records of the office of the special prosecutor for civilian and police affairs are subject to public inspection under IC 5-14-3.

(d) IC 5-14-1.5 (the open door law) applies to public meetings of the office of the special prosecutor for civilian and police affairs.



1 **Sec. 5. To carry out the chief's duties, the chief has the following**
 2 **powers and duties:**

3 **(1) As part of an investigation, the chief may:**

4 **(A) administer oaths;**

5 **(B) examine witnesses under oath;**

6 **(C) issue subpoenas and subpoenas duces tecum; and**

7 **(D) examine the records, reports, audits, reviews, papers,**
 8 **books, recommendations, contracts, correspondence, or**
 9 **any other documents maintained by an agency.**

10 **(2) The chief may apply to a circuit or superior court for an**
 11 **order holding an individual in contempt of court if the**
 12 **individual refuses to give sworn testimony under a subpoena**
 13 **issued by the chief or otherwise disobeys a subpoena or**
 14 **subpoena duces tecum issued by the chief.**

15 **(3) The chief shall prepare a report summarizing the results**
 16 **of every investigation. The report is confidential unless the**
 17 **governor declares the report a public record.**

18 **Sec. 6. Expenses incurred in prosecuting a case under this**
 19 **chapter shall be paid from appropriations from the state general**
 20 **fund.**

21 **Sec. 7. (a) The police conduct review commission is established.**

22 **(b) The commission shall hear and examine incidents involving**
 23 **law enforcement officers who kill or cause serious bodily injury to**
 24 **an unarmed person. Upon the vote of a majority of the members**
 25 **appointed to the commission, the commission may recommend that**
 26 **the office of the special prosecutor for civilian and police affairs**
 27 **appoint a special prosecuting attorney to prosecute the case.**

28 **(c) Subject to subsection (i), the commission consists of thirteen**
 29 **(13) members appointed as follows:**

30 **(1) One (1) member appointed by the president pro tempore**
 31 **of the senate.**

32 **(2) One (1) member appointed by the minority leader of the**
 33 **senate.**

34 **(3) One (1) member appointed by the speaker of the house of**
 35 **representatives.**

36 **(4) One (1) member appointed by the minority leader of the**
 37 **house of representatives.**

38 **(5) Two (2) members appointed by the governor.**

39 **(6) One (1) professor from the Indiana University -**
 40 **Bloomington Maurer School of Law, appointed by the**
 41 **governor.**

42 **(7) One (1) professor from the Indiana University -**



Indianapolis Robert H. McKinney School of Law, appointed by the governor.

(8) The executive director of the Indiana criminal justice institute, or the executive director's designee.

(9) The superintendent of the Indiana state police department, or the commissioner's designee.

(10) Three (3) persons appointed by the governor who are associated with one (1) or more law enforcement training academies in Indiana.

(d) The governor shall appoint a member of the commission to serve as chair of the commission. The chair of the commission may not be a legislative member. A new governor may remove the chair of the commission and appoint another chair.

(e) A commission member who is not a member of the Indiana general assembly serves a four (4) year term, except as follows:

(1) If a member who is a professor from the Indiana University - Bloomington Maurer School of Law ceases to be a professor from that school, the member ceases to be a member of the commission.

(2) If a member who is a professor from the Indiana University - Indianapolis Robert H. McKinney School of Law ceases to be a professor from that school, the member ceases to be a member of the commission.

(3) If the executive director of the Indiana criminal justice institute no longer holds that position, the executive director, or that executive director's designee, ceases to be a member of the commission.

(4) If the superintendent of the Indiana state police department no longer holds that position, the superintendent, or the superintendent's designee, ceases to be a member of the commission.

(5) If a member who is associated with a law enforcement training academy ceases to be associated with a law enforcement training academy, the member ceases to be a member of the commission.

(f) If a legislative member of the commission ceases to be a member of the chamber from which the member was appointed, the member ceases to be a member of the commission. A legislative member of the commission may be removed at any time by the appointing authority who appointed the legislative member.

(g) If a vacancy exists on the commission, the appointing authority who appointed the former member whose position is



vacant shall appoint an individual to fill the vacancy.

(h) The office of the special prosecutor for civilian and police affairs shall provide staff support to the commission to prepare:

(1) minutes of each meeting; and

(2) any report issued by the commission.

(i) Aside from the:

(1) superintendent of the Indiana state police or the superintendent's designee; and

(2) members of the commission who are associated with a law enforcement training academy;

a member of the commission may not be currently employed as, or have been previously employed as, a law enforcement officer.

(j) Each member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals who serve as legislative and lay members, respectively, of interim study committees established by the legislative council.

(k) The affirmative votes of a majority of the voting members appointed to the committee are required for the committee to take action on any measure, including recommending appointment of a special prosecuting attorney.

SECTION 2. IC 33-39-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. Except as provided in IC 4-2-9 (special prosecuting attorney for police and civilian affairs) or IC 12-15-23-6(d), the prosecuting attorneys, within their respective jurisdictions, shall:

(1) conduct all prosecutions for felonies, misdemeanors, or infractions and all suits on forfeited recognizances;

(2) superintend, on behalf of counties or any of the trust funds, all suits in which the the counties or trust funds may be interested or involved; and

(3) perform all other duties required by law.

SECTION 3. IC 33-39-10-2, AS ADDED BY P.L.57-2014, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 2. (a) A person may be appointed as a special prosecutor:

(1) as provided under this section; ~~or~~

(2) in accordance with IC 4-2-7-7; ~~or~~

(3) in accordance with IC 4-2-9.

(b) A circuit court or superior court judge:

(1) shall appoint a special prosecutor if:

(A) any person, other than a prosecuting attorney or the prosecuting attorney's deputy, files a verified petition



- 1 requesting the appointment of a special prosecutor; and
- 2 (B) the prosecuting attorney agrees that a special prosecutor is
- 3 needed;
- 4 (2) may appoint a special prosecutor if:
 - 5 (A) a person files a verified petition requesting the
 - 6 appointment of a special prosecutor; and
 - 7 (B) the court, after:
 - 8 (i) notice is given to the prosecuting attorney; and
 - 9 (ii) an evidentiary hearing is conducted at which the
 - 10 prosecuting attorney is given an opportunity to be heard;
 - 11 finds by clear and convincing evidence that the appointment
 - 12 is necessary to avoid an actual conflict of interest or there is
 - 13 probable cause to believe that the prosecuting attorney has
 - 14 committed a crime;
- 15 (3) may appoint a special prosecutor if:
 - 16 (A) the prosecuting attorney files a petition requesting the
 - 17 court to appoint a special prosecutor; and
 - 18 (B) the court finds that the appointment is necessary to avoid
 - 19 the appearance of impropriety;
- 20 (4) may appoint a special prosecutor if:
 - 21 (A) an elected public official who is a defendant in a criminal
 - 22 proceeding files a verified petition requesting a special
 - 23 prosecutor within ten (10) days after the date of the initial
 - 24 hearing; and
 - 25 (B) the court finds that the appointment of a special prosecutor
 - 26 is in the best interests of justice; and
- 27 (5) shall appoint a special prosecutor if:
 - 28 (A) a previously appointed special prosecutor:
 - 29 (i) files a motion to withdraw as special prosecutor; or
 - 30 (ii) has become incapable of continuing to represent the
 - 31 interests of the state; and
 - 32 (B) the court finds that the facts that established the basis for
 - 33 the initial appointment of a special prosecutor still exist.
- 34 The elected prosecuting attorney who serves in the jurisdiction of
- 35 the appointing court shall receive notice of all pleadings filed and
- 36 orders issued under this subdivision.
- 37 (c) A person appointed to serve as a special prosecutor:
 - 38 (1) must consent to the appointment; and
 - 39 (2) must be:
 - 40 (A) the prosecuting attorney or a deputy prosecuting attorney
 - 41 in a county other than the county in which the person is to
 - 42 serve as special prosecutor; or



(B) a senior prosecuting attorney as described in section 1 of this chapter. A senior prosecuting attorney may be appointed to serve as a special prosecutor in a county in which the senior prosecuting attorney previously served if the court finds that the appointment would not create the appearance of impropriety.

(d) A person appointed to serve as a special prosecutor in a county has the same powers as the prosecuting attorney of the county. However, the appointing judge shall limit the scope of the special prosecutor's duties to include only the investigation or prosecution of a particular case or particular grand jury investigation.

(e) Upon making an appointment under this section, the court shall establish the length of the special prosecutor's term. At least one (1) time every six (6) months throughout the appointed term, a special prosecutor shall file a progress report with the appointing court. A progress report:

(1) must inform the court of the:

(A) status of the investigation; and

(B) estimated time for completion of the special prosecutor's duties; and

(2) may not:

(A) include substantive facts or legal issues; or

(B) offer preliminary conclusions.

The court may extend the term of appointment upon the request of the special prosecutor or terminate any appointment if the special prosecutor has failed to file reports or a request for an extended term under this subsection.

(f) If the target of an investigation by the special prosecutor is a public servant (as defined in IC 35-31.5-2-261), the court shall order the special prosecutor to file a report of the investigation with the court at the conclusion of the investigation. A report filed under this subsection is a public record under IC 5-14-3.

(g) If a special prosecutor is not regularly employed as a full-time prosecuting attorney or full-time deputy prosecuting attorney, the compensation for the special prosecutor's services:

(1) shall be paid, as incurred, to the special prosecutor, following an application to the county auditor, from the unappropriated funds of the appointing county; and

(2) may not exceed:

(A) an hourly rate based upon the regular salary of a full-time prosecuting attorney of the appointing circuit;

(B) travel expenses and reasonable accommodation expenses



1 actually incurred; and

2 (C) other reasonable expenses actually incurred, including the
3 costs of investigation, trial and discovery preparation, and
4 other trial expenses.

5 The amount of compensation a special prosecutor receives for services
6 performed during a calendar day under subdivision (2)(A) may not
7 exceed the amount of compensation a full-time prosecuting attorney
8 would receive in salary for the calendar day.

9 (h) If the special prosecutor is regularly employed as a full-time
10 prosecuting attorney or deputy prosecuting attorney, the compensation
11 for the special prosecutor's services:

12 (1) shall be paid out of the appointing county's unappropriated
13 funds to the treasurer of the county in which the special
14 prosecutor regularly serves; and

15 (2) must include a per diem equal to the regular salary of a
16 full-time prosecuting attorney of the appointing circuit, travel
17 expenses, and reasonable accommodation expenses actually
18 incurred.

